

AGENDA BILL APPROVAL FORM

Agenda Subject: Resolution 4442		Date: January 14, 2009
Department: Legal	Attachments: Resolution 4422	Budget Impact:

Administrative Recommendation:

City Council to adopt Resolution 4442.

Background Summary: As a follow up to Resolution 4416 and following, as well, a September 22, 2008, biological opinion issued by the National Marine Fisheries Service (NMFS), regarding the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program, the City of Auburn enacted a moratorium on development within floodplains within the City. That moratorium adopted via Resolution 4416, did keep the door open for development so long as the development or the permitting activity could be determined to be in conformity with the concerns of the NMFS's biological opinion. Following the adoption of that Resolution 4416, the City of Auburn staff held a public meeting on December 10, 2008, and a public hearing on the moratorium before the City Council was held on January 5, 2009. That city council public hearing was held pursuant to the requirements of RCW 35A.63.220. Following the public meeting and the public hearing and in light of the comments that the City of Auburn has received in connection therewith, it is appropriate that the amendments to the moratorium of resolution 4416 be made to clarify the City's position regarding certain types of activities, including, specifically, where part of the property being developed is located within the floodplain and part of it is not, but the development is contained solely in the part outside of the floodplain; where boundary line adjustments may be sought to remove floodplain from one lot, adding it to another lot, so that development could be addressed consistent therewith and providing for SEPA review to be addressed, separate and apart from future or prospective development activities. These amendments would clarify the parameters of the moratorium, in addition to the language of its initial section one, that did provide for the opportunity for development (which opportunities still exists) by addressing more specifically instances involving activities solely located on parts of lots located outside of the floodplain by addressing lot line adjustments to better demark floodplain properties, and by addressing SEPA reviews.

O3.10.8

<p>Reviewed by Council & Committees:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> <p>COUNCIL COMMITTEES:</p> <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>	<p>Reviewed by Departments & Divisions:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input type="checkbox"/> Fire <input type="checkbox"/> Legal <input type="checkbox"/> Public Works </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
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Action:

Committee Approval: ☐ Yes ☐ No
 Council Approval: ☐ Yes ☐ No Call for Public Hearing ____/____/____
 Referred to _____ Until ____/____/____
 Tabled _____ Until ____/____/____

Councilmember: Wagner	Staff: Heid
Meeting Date: January 20, 2009	Item Number: VIII.B.4

RESOLUTION NO. 4 4 4 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, MODIFYING THE MORATORIUM CREATED AND ESTABLISHED BY RESOLUTION NO. 4416 FOR THE REMAINDER OF THE INITIAL SIX (6) MONTH PERIOD OF TIME ON THE FILING, RECEIPT, AND APPROVAL OF APPLICATIONS FOR DEVELOPMENT WITHIN AREAS OF THE CITY LOCATED WITHIN, IN WHOLE OR IN PART, FLOODPLAINS AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION

WHEREAS, Section 35A.63.220 of the Revised Code of Washington (RCW) authorizes the City Council to establish a moratorium for an initial period of six months, subject to subsequent extensions, approved by separate council action, provided that a subsequent public hearing is held on the moratorium within at least sixty (60) days of its adoption, at which time findings of fact could be made; and

WHEREAS, the City of Auburn has territory within its corporate boundaries that is located within both the current and the proposed Federal Emergency Management Administration (FEMA) designated floodplains; and

WHEREAS, FEMA and the National Marine Fisheries Service (NMFS) have collaborated on a position paper that seeks to prevent continued degradation of existing floodplain, and to promote low impact development in floodplain areas of the region that could effect endangered species; and

WHEREAS, the guidelines and ultimate responses and strategies to address the FEMA/NMFS concerns have not yet been fully developed and implemented; and

WHEREAS, FEMA and NMFS have taken the position that if a permitting agency, such as the City of Auburn, grants permits in floodplain areas within its boundaries that are later determined to adversely impact the floodplains and/or endangered species, the permitting agency will be liable for the resulting "take" on endangered species; and

WHEREAS, FEMA and NMFS recommend that jurisdictions that have territory within the floodplains employ moratoria to preserve and protect endangered species and to avoid the take of such endangered species through development that does not meet their intended goals of low impact development; and

WHEREAS, even though the City has implemented and enforced FEMA's minimum standards as they existed prior to this recent NMFS biological opinion, NMFS has determined that FEMA's standards are not sufficient to avoid the taking of endangered species; and

WHEREAS, pursuant to Resolution No. 4416, the Auburn City Council created and established a moratorium on the filing, receipt and approval of applications for development within areas of the City located within, in whole or in part, floodplains as depicted in the most currently approved floodplain maps as published by FEMA, and scheduled a public hearing for January 5, 2009 as required by statute; and

WHEREAS, following the public hearing on the moratorium heard on January 5, 2009, it is appropriate for the City Council to modify the moratorium to assure that any development that does occur within floodplains within the City of

Auburn develops in a way that meets the requirements of FEMA and NMFS to preserve and protect endangered species, and that a moratorium to assure such compliance is appropriate until the regulations have been developed which would implement the strategies of protecting the endangered species in floodplain development, taking into account the concerns expressed at said public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES as follows:

Section 1. Modification of Moratorium. The City Council hereby modifies the moratorium established by Resolution No. 4416 for the remainder of the initial period of six (6) months provided by said Resolution on the filing, receipt and approval of applications for development within areas of the City located within, in whole or in part, floodplains as depicted in the most currently approved floodplain maps as published by FEMA. Provided, that (1) applications for development within floodplain areas of the City may be filed, received and approved during the term of this moratorium if the applicants can establish to the City's satisfaction that they are able to meet the requirements of FEMA and NMFS in developing their property in a way that adequately protects the endangered species and that meets the FEMA and NMFS concerns for floodplain development; (2) applications for development within floodplain areas of the City shall not fall within the scope of this moratorium if the development activity is located completely on the portion of a parcel lying outside of the floodplain and the applicant clearly demonstrates that no part or aspect of the development impacts the floodplain; (3) applications for boundary line

adjustments of parcels of property located partially within and partially outside of floodplain areas of the City do not fall within the scope of this moratorium if the boundary line adjustment merely reconfigures existing lots so that one or more lot(s) lie(s) outside of the floodplain, all other requirements for boundary line adjustments in the City Code are met, and the applicant clearly demonstrates that the boundary line adjustment does not otherwise impact the floodplain; and (4) environmental review of projects under the State Environmental Policy Act (SEPA) affecting properties within or near the floodplain do not fall within the scope of this moratorium so long as the applicants for environmental review acknowledge in writing their understanding and agreement that such environmental review does not grant any rights to develop the property that is subject of the environmental review.

Section 2. Terms of Moratorium. The moratorium as established and created by Resolution No. 4416 and as modified by this Resolution shall continue to be in effect for a period of six (6) months after the date of passage of Resolution No. 4416 (November 17, 2008) unless repealed, extended or modified by the City Council to in accordance with RCW 35A.63.220. Provided, that the moratorium shall automatically expire upon the effective date of a City of Auburn ordinance establishing and implementing strategies to meet the FEMA/NMFS floodplain development/endangered species concerns.

Section 3. Administrative Implementation. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 4. Effective Date. That this Resolution shall take effect
and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 200____.

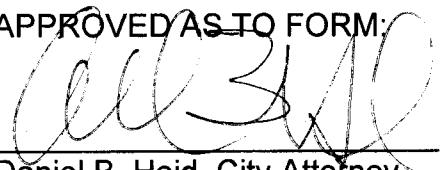
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney